

## **FINAL STATEMENT OF REASONS:**

This action amends provisions governing immediate family members to include registered domestic partners within the California Department of Corrections and Rehabilitation (Department), California Code of Regulations, Title 15.

Sections 3000, 3045.2, 3170.1, 3176, 3177, and 3815 are being amended in response to Assembly Bill (AB) 205, which amended the Family Code, to include Section 297.5(a) that registered domestic partners shall have the same rights, protections, and benefits; and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

AB 205 states that "No public agency in this state may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses....." and "Registered domestic partners shall have the same rights regarding nondiscrimination as those provided to spouses." This act shall be known and may be cited as "the California Domestic Partner Rights and Responsibilities Act of 2003." The risk of litigation compels the Department to follow AB 205.

Currently, the CCR, Title 15, Section 3000, defines Immediate Family Members as legal spouse, natural parents; adoptive parents; if the adoption occurred and a family relationship existed prior to the inmate's incarceration; step parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate's natural and adoptive children; grandchildren; and legal stepchildren of the inmate. The Department is including "registered domestic partner" in the definition "immediate family members," with the terms spouse, husband, or wife.

AB 205 is designed to help California move closer to fulfilling the promises of inalienable rights, liberty, and equality contained in Sections 1 and 7 of Article 1 of the California Constitution by providing all caring and committed couples, regardless of their gender or sexual orientation, the opportunity to obtain essential rights, protections, and benefits to further the State's interests in promoting stable and lasting family relationships.

According to AB 205, many Californians have formed lasting, committed, and caring relationships with persons of the same sex. These couples share lives together, participate in their communities together, and many raise children and care for other dependent family members together. Expanding the rights and creating responsibilities of registered domestic partners would further California's interests in promoting family relationships and protecting family members during life crises. AB 205 gives registered domestic partners the same rights regarding nondiscrimination as those provided to spouses.

Most aspects of implementing AB 205 were not problematic for the Department, such as next of kin notification and excused time off from work and training assignments for family emergencies. The Department carefully deliberated the issue of extending overnight visit privileges to registered domestic partners. The California Penal Code contains prohibitions against specific sex acts by inmates. Likewise, because of the potential for coercion in the prison environment, the Department supports national efforts to reduce or eliminate prison rape. (See federal Prison Rape Elimination Act as implemented by the Department in the Department Operations Manual, Chapter 5, Article 44.)

This amendment would extend the rights of persons registered as domestic partners, such that registered domestic partners of inmates would be given the same rights as those provided to spouses. This would only apply to registered domestic partners of inmates who are not themselves incarcerated, who live in the community, and whose domestic partner relationship was legally established prior to the inmate's incarceration. Family visits between registered domestic partners who are also inmates would not be permitted. Such family visits are not allowed for heterosexual spouses when both are incarcerated.

Further, Family Code section 297.5(e) provides that to the extent that provisions of California law rely upon federal law in a way that would otherwise cause domestic partners to be treated differently than spouses, "registered domestic partners shall be treated by California law as if federal law recognized a domestic partnership in the same manner as California law." The federal immigration law, at 8 U.S.C. Section 1621(d), upon which Title 15, Section 3815 is based, provides that a state may allow an illegal alien to be eligible for any state or local public benefit "through the enactment of a state law which affirmatively provides for such eligibility." These statutes together suggest that any state benefits for the spouses of parolee-alien must be equally available to the registered domestic partners of parolee-alien.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

**Section 3000, Definition is amended** to incorporate "registered domestic partner" in the definition "Immediate Family Members" with spouse, husband, or wife. This is necessary to update the CCR Title 15, Section 3000, which defines Immediate Family Members as legal spouse, natural parents; adoptive parents; if the adoption occurred and a family relationship existed prior to the inmate's incarceration; step parents or foster parents; grandparents; natural, step, or foster brothers or sisters; the inmate's natural and adoptive children; grandchildren; and legal stepchildren of the inmate. AB 205 extends the rights and duties of marriage to persons registered as domestic partners and gives registered domestic partners the same rights regarding nondiscrimination as those provided to spouses.

**Subsection 3045.2(a) through 3045.2(d)(2)(D) is unchanged.**

**Subsection 3045.2(d)(2)(E) is amended** to refer to the definition of immediate family member. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

**Subsection 3045.2(d)(2)(F) through 3045.2(f) is unchanged.**

**Subsection 3170.1(a) through 3170.1(d) is unchanged.**

**Subsection 3170.1(d)(1) is amended** to refer to the definition of immediate family members. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

**Subsection 3170.1(d)(2) through 3170.1(g) is unchanged.**

**Section 3176 through 3176(a)(9)(C) is unchanged.**

**Section 3176(a)(9)(D) is amended** to refer to the definition of immediate family. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates. Also, this act is intended to provide all caring and committed couples the opportunity to obtain essential rights and benefits to further the state's interests in promoting stable and lasting family relationships during life crises. AB 205 also states "surviving registered domestic partner, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under the law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower."

**Section 3176(a)(9)(E) through 3176(d) is unchanged.**

**Section 3177 Existing second sentence of first paragraph is amended** to refer to the definition of immediate family members. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

**Section 3177 Existing first sentence of second paragraph of Section 3177 is deleted** to remove common-law-relationship from being defined as immediate family member and to include registered domestic partner as immediate family member. It is necessary to delete common-law relationship because this relationship to the inmate will not be recognized as "immediate family members" for the purpose of family visiting. Including registered domestic partner in this text is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

**Section 3177(a) through 3177(b) is unchanged.**

**Subsection 3177(b)(1) is amended** to refer to the definition of family member. This is necessary to ensure persons registered as domestic partners of inmates will be treated the same as spouses of inmates.

**Subsection 3177(b)(1)(A) through 3177(g) is unchanged.**

**Subsection 3815(a) through 3815(d) is unchanged.**

**Subsection 3815(e)(1) is amended** to include Registered Domestic partner(s). AB 205 states “Where necessary to implement the rights of registered domestic partners under this act, gender-specific terms referring to spouses shall be construed to include domestic partners.” Also, the federal immigration law, at 8 U.S.C. Section 1621(d), upon which Title 15, Section 3815 is based, provides that a state may allow an illegal alien to be eligible for any state or local public benefit “through the enactment of a state law which affirmatively provides for such eligibility.” These statutes together suggest that any state benefits for the spouses of parolee-alien must be equally available to the registered domestic partners of parolee-alien.

**Subsection 3815(e)(2) through 3815(e)(4) is unchanged.**

#### **SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS:**

##### **COMMENTS #1:**

**Comment A:** Commenter contends the Department may eventually have to include common law relationships since the focus is on gay/lesbian relations, because gay/lesbian relationships are approved and common law heterosexual relationships are not.

**Accommodation:** None

**Response A:** The Department contends it is required by law to comply with AB 205, which does not include common law relationships. However, under AB 205 registered domestic partnerships are also available for heterosexual couples 62 years or age or older.

**Comment B:** Commenter contends everyone has their reasons for wanting to get married. The law forbids gays/lesbian marriages, yet allows them to have overnight visits.

**Accommodation:** None.

**Response B:** The Department contends these regulations are in compliance with AB 205, which gives registered domestic partners, including legally recognized gay/lesbian relationships, the same rights as spouses and include family visits as defined in Section 3177 of the CCR, Title 15.

##### **COMMENTS #2:**

**Comment A:** Commenter contends the inclusion of registered domestic partners as members of a prisoner’s immediate family will give them the same recognition as a prisoner’s spouse. This recognition will ensure that undocumented immigrants, who are on parole, will be entitled to state benefits.

**Accommodation:** None.

**Response A:** The Department contends an undocumented immigrant who is on parole may be entitled to state benefits if the registered domestic partnership complies with the stipulations set forth in AB 205.

**Comment B:** Commenter contends in the Initial Statement of Reasons it states that the term “registered domestic partner” only applies to a relationship that was established prior to the prisoner’s incarceration. If two people consider themselves domestic partners prior to the prisoner’s incarceration and they can document their relationship, but have not yet filed their Declaration of Domestic Partnership with the Secretary of State’s office, the inclusion of registered domestic partners would not apply to them.

**Accommodation:** None.

**Response B:** The Department contends AB 205 states a domestic partnership shall be established when both persons file a Declaration of Domestic Partnership with the Secretary of State and, at the time of filing, both persons

have a common residence. “Have a common residence” means that both domestic partners share the same residence. The Department does not view a current prison inmate as sharing a residence with anyone. An inmate therefore could not establish a registered domestic partnership while he or she is still incarcerated.

**Comment C:** Commenter contends none of the sections listed in the Notice of Change to Regulations address the fact that registered domestic partners must have filed with the Secretary of State prior to incarceration.

**Accommodation:** None.

**Response C:** The Department contends it is not the responsibility of the Department to inform individuals how to qualify to be registered domestic partners. This is defined in AB 205. The Department must comply with AB 205 by giving them the same rights as spouses and other immediate family members. The word “Registered” in the Department’s use of the phrase “Registered Domestic Partners” is intentional. It implies that such partnerships must be established in accordance with AB 205 that includes registration with the Secretary of State.

**Comment D:** Commenter contends provisions in Title 15 permit prisoners to have a wedding at the prison during their incarceration. It only seems equitable that a prisoner who has a domestic partner should be allowed to have that person visit the prison with a notary public so that the necessary form can be filled out and the signatures notarized. The partner who is not incarcerated can then file the documents with the Secretary of State’s office and pay a fee, which will then allow them to be recognized as registered domestic partners.

**Accommodation:** None.

**Response D:** The Department contends AB 205 determines how domestic partners qualify and register and it is beyond the purview of the Department to make any changes. **See Commenter #2, Response B.**

**Comment E:** Commenter contends it is of concern that none of the sections listed in the Notice contain any information the registered domestic partnership had to exist prior to the prisoner’s incarceration. The failure to include this information in specific sections of the Title 15 may lead to inconsistencies among the prisons in the application of the new regulations.

**Accommodation:** None.

**Response E:** The Department contends there will be no inconsistencies among the institutions in the application of the new regulations. Department policy requires proof of the registered domestic partnership before making accommodations for a registered domestic partner.

**Comment F:** Commenter contends the regulations be amended to include a provision that prisoners who were in an established domestic partnership relationship prior to their incarceration and/or who develop a partnership relationship during their incarceration, be allowed to formalize that relationship by filing a Declaration of Domestic Partnership with the Secretary of State so they can be recognized as registered domestic partners by the CDCR.

**Accommodation:** None.

**Response F:** The Department contends that amending the criteria for establishing Registered Domestic Partnerships through these regulations is beyond the purview of the Department. **See Commenter #2, Response B.**

### **COMMENTER #3**

**Comment A:** Commenter asks if inmates are incarcerated and one or both may have life sentence, is it possible to register as a domestic partner.

**Accommodation:** None.

**Response A:** **See Commenter #2, Response B.**

**Comment B:** Commenter contends this action governing immediate family members within the CDCR applies only to registered domestic partners of inmates who are not incarcerated and who live in the community, and whose relationship was established prior to the inmate’s incarceration, implies that it is meant to prevent two inmates from family visits.

**Accommodation:** None.

**Response B:** The Department contends that, because of the higher potential for prison inmates who are less supervised during family visiting to plan or carry out violations of law, inmates have never been allowed family visits with other inmates. Family visits accordingly are not afforded to two current inmates who are spouses, parents, children, siblings, and other relatives. The same rule would necessarily apply to two current inmates who are registered domestic partners.

**Comment C:** Commenter asks if it is possible for two people, one an inmate and the other an inmate who will be paroled, to secure a family visit after that inmate is paroled.

**Accommodation:** None.

**Response C:** The Department contends this is beyond the purview of this office. Also see **Commenter #2, Response B.**

**Comment D:** Commenter asks if there a time limit for two inmates to establish they are a couple to qualify for family visits after one paroles.

**Accommodation:** None.

**Response D:** The Department contends information to establish and register as domestic partners is available in AB 205. Also see **Commenter #2, Response B.**

**Comment E:** Commenter requests necessary paperwork to file for a registered domestic partnership.

**Accommodation:** None.

**Response E:** The Department contends forms to file for a registered domestic partnership may only be obtained from the Secretary of State or a county clerk's office.

#### **PUBLIC HEARING COMMENTS:**

**Public Hearing was held on March 23, 2007 at 9:00 a.m.**

#### **SUMMARIES AND RESPONSES TO PUBLIC COMMENTS:**

##### **Speaker #1**

**Comment A:** Commenter contends the proposed amendment is necessary because the current definition of family does not include prisoners' registered domestic partners, which has resulted in the denial of access to the full range of visitation opportunities provided to other prisoners' family members, including spouses.

**Accommodation:** None.

**Response A:** The Department contends that this regulatory amendment is necessary to ensure that registered domestic partners are given equal status and treatment as spouses and other immediate family members.

**Comment B:** Commenter contends the exclusion of being included in the definition of family member has primarily affected the domestic partners of lesbian and gay prisoners because they are prohibited from marriage.

**Accommodation:** None.

**Response B:** The Department contends that the inclusion of registered domestic partners into the definition will cause registered domestic partners to be departmentally recognized in the same manner as spouses and other immediate family members.

**Comment C:** Commenter contends the exclusions worked by the current regulations contradict California Law.

**Accommodation:** None.

**Response C:** The Department contends complying with AB 205 brings the Department into compliance with existing California law and provides that a gay and lesbian registered domestic partner is given the same rights as a spouse.

**Comment D:** Commenter contends AB 205 was enacted by the California legislature whose stated intention was to provide all caring and committed couples, regardless of their gender or sexual orientation, the opportunity to obtain inalienable rights, protections and benefits to further the State's interest in promoting stable and lasting family relationships

**Accommodation:** None

**Response D:** See Speaker #1, Response C.

**Comment E:** Commenter contends the Department's proposed amendment is necessary to bring the Department's regulations into compliance with existing California Law.

**Accommodation:** None

**Response E:** See Speaker #1, Response C.

**Comment F:** Commenter contends family visits are important to prisoners, prisoner's families, and the Department to maintain family and community connections, which prepare prisoners for successful rehabilitation and release after incarceration.

**Accommodation:** None

**Response F:** The Department contends it has always recognized the valuable role family visits have in maintaining connections to the family and community. It is, and has been, the intent of the Department to establish a visiting process within the law that will accommodate the inmates and their families to keep these connections.

**Comment G:** Commenter contends incarceration results in prisoners being removed from their families and communities, and visitation between inmates and their families is essential to maintain family connections during incarceration.

**Accommodation:** None

**Response G:** The Department contends that although the purpose of incarceration is to remove them from the community, it is important that family and community connections be maintained.

**Comment H:** Commenter contends visitation prepares prisoners for successful release and rehabilitation and gives the following example: Of the number of prisoners paroled in 2002, 40% returned to prison within a year and 57.24% returned to prison within 3 years, and contends these high percentages of recidivism drive home the importance of successful release, and lower recidivism rates are to the common interests of our communities.

**Accommodation:** None

**Response H:** See Speaker #1, Response F.

**Comment I:** Commenter contends building and renewing family relationships is a key element for a prisoner's successful reentry into the community after incarceration and currently, prisoners' registered domestic partners are not recognized as family and therefore not eligible to participate in family visitation programs and have been denied the same opportunity as spouses or other family members to maintain family ties.

**Accommodation:** None

**Response I:** See Speaker 1, Response F.

**Comment J:** Commenter contends that excluding the domestic partners of prisoners from family visitation arguably results in lesbian and gay prisoners being unfairly denied consideration for parole when the California Board of Prison Terms (BPT) evaluates the "family support" of an inmate.

**Accommodation:** None

**Response J:** The Department contends although family support is one of the criteria the Board of Parole Hearings (BPH) uses when evaluating an inmate for parole, the BPH does not base its decision for parole on the fact that a gay or lesbian inmate has a registered domestic partner, nor unfairly deny consideration for parole because a gay or lesbian inmate does not have a registered domestic partner.

**Comment K:** Commenter contends one registered domestic partner stated that the regular visiting room was very difficult because the attitudes of other inmates, visitors, and staff towards gay couples made it uncomfortable for us to visit each other. He also states “I was afraid for what would happen to him since people knew he was gay, and I worried about his safety every day he was incarcerated.”

**Accommodation:** None

**Response K:** The Department contends that complying with AB 205 requires registered domestic partners to be recognized by Department staff as family members. Although the Department can not be responsible for changing the attitude of other inmates or visitors towards gay and lesbian registered domestic partners within the prison setting, it has the responsibility to ensure the safety and security of all inmates and visitors.

**Comment L:** Commenter contends the proposed amendments will prevent further harm and unequal treatment because registered domestic partners are recognized as a member of the prisoner’s family.

**Accommodation:** None

**Response L:** The Department contends prior to AB 205 there was no intent of harm and unequal treatment by the Department as the welfare of inmates has always been a priority. **See Commenter #1, Response K.**

**Comment M:** Commenter requests the Department clearly communicate the change to all Department institutions and employees that discrimination and harassment of prisoners’ of same-sex partners is not the policy of the Department.

**Accommodation:** None

**Response M:** The Department contends each institution and its employees have been notified of the implementation of AB 205 through the public regulation adoption process.

**Speaker #2:**

**Comment A:** Commenter contends family visits for domestic partners are long overdue in terms of family contact and being honored as an individual with quality within the prison system.

**Accommodation:** None

**Response A:** The Department contends it has promulgated the regulations as expeditiously as possible pursuant to AB 205.

**Comment B:** Commenter contends as a parolee, he had seen gay people within the CDCR populations have problems over the years and now because of the change he is making for the quality of gay and lesbian relationships, they may not return into the system if they are treated the same as others.

**Accommodation:** None

**Response B:** The Department contends that although the above comment does regard an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 113435.9, the above comment with regards to registered domestic partners is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.